

**IT 00-18**

**Tax Type: Income Tax**

**Issue: Withholding Tax – Failure to File Return/Make Payment**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC WAY, INC.,  
d/b/a JANE DOE,  
Taxpayer**

**No.  
FEIN:  
Tax Year: 1995 and 1996**

**Kenneth Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Ms. JANE DOE; Mr. Rick Walton, on behalf of the Illinois Department of Revenue.

**SYNOPSIS:**

This matter comes on for review pursuant to JANE DOE's timely protest of the Notice of Deficiency ("NOD") issued on June 2, 1999 proposing an assessment of tax, penalty and interest for the fourth quarter of 1995 and the four quarters of 1996. The Illinois Department of Revenue (hereinafter the "Department") maintains that the taxpayer withheld Illinois income tax from the compensation paid to its employees but did not pay such monies over to the Department or file a tax return as required under Section 704 and 705 of the Illinois Income Tax Act. A hearing was held on this matter on August 23, 2000, with Ms. DOE providing testimony. Following the

submission of all evidence and a review of the record, it is recommended that the NOD be cancelled.

**FINDINGS OF FACT:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD issued on June 2, 1999, showing a total liability due and owing in the amount of \$5,949 for the fourth quarter of 1995 and the four quarters of 1996. Tr. p. 4; Dept. Ex. No. 1.
2. Department records contain an "IL-W-3, Reconciliation of Illinois Income Tax Withheld" for the fourth quarter of 1995 showing a tax liability of \$707.47. The form shows social security number 361-40-7049, the name of JANE DOE, ABC Way, Anywhere, Illinois, 00000. The social security number is crossed out on the form and IBT number 0000-0000 is written over it. Tr. pp. 5-6; Dept. Ex. No. 2.
3. An NOD was issued on June 2, 1999 to "ABC Way, Inc., d/b/a JANE DOE, ABC Way, Anywhere, IL, 00000" under FEIN No. 00-000000." Dept. Ex. No. 1.
4. JANE DOE was a lawyer practicing as a sole practitioner in Illinois. JANE DOE did not do business as "ABC Way, Inc." Tr. pp. 3, 17.

**CONCLUSIONS OF LAW:**

The Department issued the NOD claiming that the taxpayer failed to file withholding tax returns and pay over the taxes deducted from its employees' wages to the State of Illinois as required under Sections 704 and 705 of the Illinois Income Tax Act. Section 705 states in pertinent part:

Employer's Liability for Withheld Tax:

Every employer who deducts and withholds or is required to deduct and withhold tax under this Act is liable for such tax.

For purposes of assessment and collection, any amount

withheld or required to be withheld and paid over to the Department, and any penalties and interest with respect thereto, shall be considered the tax of the employer. 35 ILCS 5/705.

Pursuant to Illinois statute, the NOD is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. 35 ILCS 5/904.

JANE DOE testified at the evidentiary hearing that in 1995 and 1996, she did not have an FEIN number. She stated that any document she was required to file with the government was filed under her social security number. She also testified that she was a sole practitioner and had no employees in 1995 and 1996. Tr. pp. 8-9. Ms. DOE indicated that she may have had independent contractors or “1099” employees working for her during the years at issue, but no taxes were deducted from their wages. Tr. pp. 13-16. She stated that she did not recognize the “IL-W-3,” which the Department claims is the basis for the issuance of the NOD, that it was not in her handwriting, and that she did not believe that she produced the document. Tr. p. 14.

Ms. DOE did receive a FEIN number in 1997. At that time, she had “taxable employees” and “went on a payroll service who took care of the process automatically and obtained the FEIN number.” Tr. p. 19. The FEIN number she received was 36-4096413, the number appearing on the NOD issued on June 2, 1999 to “ABC Way, Inc., d/b/a JANE DOE.” Tr. p. 19. Ms. DOE testified that she did not do business as “ABC Way.” According to Ms. DOE, “there may be a company named ‘ABC Way, Inc.’ that owes this money and somehow I ended up with ... their FEIN number...” Tr. p. 21.

The Department was unable to connect the “IL-W-3” to the issuance of the NOD. “ABC Way, Inc.” does not appear on the “IL-W-3.” The Department’s counsel stated that even though Ms. DOE may have used a social security number as a tax identification number in 1995 and 1996, the NOD would have been issued under the FEIN number, because the FEIN number was “in

place” in 1999 when the NOD was issued. Tr. pp. 21-22. JANE DOE asked the Department’s counsel to stipulate that she was not ABC Way, Inc. Counsel responded: “The Department agrees that the taxpayer, JANE DOE, was not ABC Way, Inc. The Department asserts that JANE DOE was a sole practitioner.” Tr. p. 17.

Based on the Department’s statement, I am unable to conclude that ABC Way, Inc. “did business as” JANE DOE or that JANE DOE, individually, is liable for the unpaid withholding taxes. Accordingly, it is my recommendation that the Notice of Deficiency be cancelled.

ENTER:

Date: September 22, 2000

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Kenneth J. Galvin  
Administrative Law Judge